

CLERK'S OFFICE U.S. DIST. COURT AT ROANOKE, VA FILED
JUL 20 2005
JOHN F. CORCORAN, CLERK BY: <i>[Signature]</i> DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

TYRONE SHELTON, Petitioner,	)	Civil Action No. 7:05-cv-00271
v.	)	<b><u>FINAL ORDER</u></b>
TRACY S. RAY, Respondent.	)	By: Hon. James C. Turk Senior United States District Judge

In accordance with the written memorandum opinion entered this day, it is hereby

**ADJUDGED AND ORDERED**

that this petition for writ of habeas corpus, pursuant to 28 U.S.C. §2254, as supplemented, shall be and hereby is **DISMISSED** as untimely, pursuant to Rule 4 of the Rules Governing §2254 Proceedings, and 28 U.S.C. § 2244(d)(1); and that this action is stricken from the active docket of this court.<sup>1</sup>

The Clerk is directed to send certified copies of this order and the accompanying memorandum opinion to the petitioner and to counsel of record for the respondent.

ENTER: This 20<sup>th</sup> day of July, 2005.

*James C. Turk*  
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Senior United States District Judge

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<sup>1</sup>The petitioner is advised that he may appeal this decision, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, if a circuit court of appeals justice or this court issues a certificate of appealability, pursuant to 28 U.S.C. §2253(c). A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. §2253(c)(1). Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, this court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322 (2003); Slack v. McDaniel, 529 U.S. 473 (2000). If petitioner intends to appeal and seek a certificate of appealability from the Circuit Court of Appeals for the Fourth Circuit, his first step is to file a notice of appeal with this court within 30 days of the date of entry of this Order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).